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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/518,729

12/20/2004

Teresa Ancona

04981-00532-US

3186

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03/06/2009

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EXAMINER

LEWIS, JUSTIN V

ART UNIT

PAPER NUMBER

3725

MAIL DATE

DELIVERY MODE

03/06/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	<p>Application No. 10/518,729</p>	<p>Applicant(s) ANCONA ET AL.</p>	
	<p>Examiner JUSTIN V. LEWIS</p>	<p>Art Unit 3725</p>	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 06 February 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☒ Other: See Continuation Sheet.

/Dana Ross/
Supervisory Patent Examiner, Art Unit 3725

Continuation of 13. Other:

In response to Applicants' argument that the prior rejection of claims 1-11 were previously withdrawn in view of Applicants' arguments in support of patentability (see Applicants' Arguments/Remarks pg. 5, lines 6-8), Examiner respectfully asserts that the Final Rejection dated 07 November 2008 was transmitted in response to Applicants' amendments to the claims, rather than in response to Applicants' arguments.

In response to Applicants' argument that the label disclosed by the Carides reference is non-analogous to Applicants' claimed invention (see Applicants' Arguments/Remarks, pg. 5, lines 16-25), Examiner respectfully asserts that the label taught by Carides meets the criteria claimed by Applicants, as set forth in the Final Rejection dated 07 November 2008.

In response to Applicants' argument that Examiner failed to set forth a motivation for combining the teachings of Carides and Fukumoto in the Final Rejection dated 07 November 2008 (see Applicants' Arguments/Remarks, pg. 6, lines 1-3), Examiner respectfully asserts that Fukumoto explicitly sets forth the suggestion of adding Braille characters to a label structure (see Fukumoto figs. 4A-4B, in view of col. 2, lines 36-42).

In response to Applicants' argument that Examiner's conclusion of obviousness is based upon improper hindsight reasoning (see Applicants' Arguments/Remarks, pg. 6, lines 3-15), it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

In response to Applicants' argument that the Carides, Fukumoto and Bright references fail to teach surface modification in cooperation with indicia printed upon the substrate as contained in Applicants' claimed invention (see Applicants' Argument/Remarks pg. 6, lines 16-26), Examiner respectfully asserts that the Fukumoto reference explicitly provides such a teaching (see Fukumoto col. 2, lines 36-42).

In response to Applicants' argument that the Carides, Fukumoto and Summer references fail to teach the invention claimed by Applicants in claims 9-10 (see Applicants' Argument/Remarks, pg. 6, line 27- pg. 7, line 7), Examiner respectfully asserts that the Summer reference teaches the application of Braille indicia to a substrate container (see col. 2, lines 43-46), which would enable sight impaired persons to discern desired information, but Summer makes no mention of including conventional text along with said Braille indicia. However, the application of label a such as that disclosed by Carides in view of Fukumoto would permit sighted persons along with visually impaired person to simultaneously appreciate said indicia.